

REMARKS

In view of the following remarks, the Examiner is requested to allow Claims 1-23 and 25-30, the only claims pending and under examination in this application.

Claims 1, 25 and 26 have been amended to indicate that the flowable composition sets into a calcium phosphate product that includes poorly crystalline calcium phosphate mineral that includes atoms of a radio-opaque element of the contrast agent. Support for these amendments may be found throughout the specification and claims as originally filed. For instance, support may be found at page 11, lines 1 to 5 and 16-22, and page 6, line 21 to page 7, line 2. Accordingly, no new matter has been added.

As no new matter has been added by way of these amendments, their entry is respectfully requested.

Claim Rejections – 35 U.S.C. § 103(a)

Claims 1-23 and 25-30 remain rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Wenz (WO 2004/050131 in view of Constantz et al. (USPN 6,334,891) and Constantz et al. (USPN 6,719,993).

The rejected claims are directed to methods of producing a flowable composition (e.g., a paste) that sets into a calcium phosphate containing product. Additional claims are directed to kits and packages containing the same. An element of the claims is a water-soluble contrast agent that includes a radio-opaque element that is incorporated into a calcium phosphate product, where the product is a poorly crystalline calcium phosphate mineral which includes atoms of the radio-opaque element of the contrast agent. The Applicants contend that the recited combination is deficient in that it does not teach or suggest this element.

The 35 U.S.C. § 103(a) rejection has been maintained because the Office alleges that the claims do not set forth any conditions to ensure that the water-soluble

contrast agent remains incorporated in the calcium phosphate compound for an appreciable amount of time. The Office suggests that the Applicants amend the claims to clarify that the water-soluble contrast agent remains incorporated within the calcium phosphate product (e.g., is not leaked out).

The present claims include a water-soluble contrast agent that contains a radio-opaque element that is incorporated into a poorly crystalline calcium phosphate mineral containing product.

The Applicants contend that a *prima facie* case of obviousness has not been established because the recited combination fails to teach or suggest this element. As explained in the previous response, to the extent that Wenz discloses a water-soluble contrast agent, Wenz discloses the use of an iodide compound. However, the iodide compound of Wenz is not incorporated into the calcium phosphate product as claimed. Rather, Wenz discloses that the "iodo" compound additive (e.g., the soluble contrast agent) is leaked out of and eliminated from the cement product. See page 8, lines 12 to 16.

Therefore, because the iodide compounds disclosed by Wenz are not incorporated into the calcium phosphate product as claimed but rather *are* leaked out of and eliminated from the final cement product, Wenz does not teach or suggest the claimed invention. As Constantz '891 was cited solely for its disclosure of various components that may be included in a kit and Constantz '993 was cited for its disclosure of the use of a silicate solution, they fail to remedy the deficiencies of Wenz.

Therefore, the Applicants contend that the recited combination of Wenz in view of Constantz '891 and '993 fails to teach or suggest all the elements of the rejected claims. Accordingly, the 35 U.S.C. § 103(a) rejection of Claims 1-23 and 25-23 may be withdrawn.

CONCLUSION

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number SKEL-007.

Respectfully submitted,
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